



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH PUBLIC HEALTH HEARING OFFICE

December 19, 2000

Bruce M. Black.
Connecticut Abatement Technologies
2 Elizabeth Street
West Haven, Connecticut 06515

By First Class Mail

Linda Fazzina, Staff Attorney
Department of Public Health
410 Capitol Avenue, MS #LEG
P.O. Box 340308
Hartford, Connecticut 06134-0308

Inter-Departmental Mail

Re: Connecticut Abatement Technologies. - Petition No. 200000118-053-001
Re: Requests for Reconsideration

NOTICE OF RULING ON REQUEST FOR RECONSIDERATION

Respondent having filed a Request for Reconsideration on December 12, 2000, the Department having no objection thereto, and good cause appearing

IT IS HEREBY ORDERED that respondent's Request for Reconsideration is GRANTED and the Order is amended as set forth in the Amended Order enclosed herewith.

BY:


Elisabeth Borrino, Hearing Officer

Enclosure: Amended Order



Phone:
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410 Capitol Avenue - MS # _____
P.O. Box 340308 Hartford, CT 06134
An Equal Opportunity Employer

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH**

In re: Connecticut Abatement
Technologies, Inc.

Petition No. 20000118-053-001

AMENDED ORDER

On December 12, 2000, respondent filed a Request for Reconsideration of paragraph 2(b) of the Revised Memorandum of Decision issued on October 30, 2000. The Department had no objection.

On December 19, 2000, the Hearing Officer granted respondent's Request for Reconsideration and the Order is hereby amended as follows:

Pursuant to Connecticut General Statutes §§19a-17 and 20-440, this Hearing Officer orders the following against the asbestos abatement contractor license of Connecticut Abatement Technologies, Inc., license number: 000087:

1. Respondent shall pay a civil penalty of four thousand dollars (\$4,000.00) by certified or cashier's check payable to "Treasurer, State of Connecticut." The check shall reference the Petition Number on the face of the check, and shall be payable within thirty days of the effective date of this Decision.
2. Respondent's license shall be placed on probation until it completes five interior asbestos abatement projects. The five such projects that are subject of the probationary terms shall be the first five projects performed by respondent after the effective date of this Order and that involve interior abatement of more than three linear feet or more than three square feet of ACM; provided that such abatement projects do not require an emergency asbestos abatement notification where respondent does not have at least ten days before the start of the asbestos abatement to engage the services of an asbestos abatement project monitor as required hereinbelow. The terms and conditions of the probation shall be as follows:

- a. For the next five asbestos abatement projects respondent contracts to perform, respondent, shall provide a copy of the Final Decision and Amended Order to the Local Director of Health in any town in which the project is located;
- b. No less than ten (10) days before commencement of or engaging in each asbestos abatement project, respondent shall provide the Department with the name of each client and the location where it is conducting asbestos abatement activity, and shall certify that it has complied with Paragraph 2a of this Order;
- c. Respondent shall obtain at its own expense the services of a licensed asbestos abatement project monitor ("monitor"), pre-approved by the Department, to conduct direct on-site inspections of each of the five asbestos abatement projects.
 - (i) The monitor shall have the right to monitor any and all work on the projects by any means, which he or she deems necessary to determine whether the abatement is being conducted in accordance with the controlling statutes and regulations. Respondent shall fully cooperate with the monitor;
 - (ii) Respondent shall provide the monitor with the original records maintained on each asbestos abatement project;
 - (iii) The monitor shall prepare and submit directly to the Department, a written report setting forth his/her findings regarding each such project, including respondent's site records. The monitor's reports shall include documentation of dates and duration of meetings with the corporate officers of respondent, a general description of the work reviewed, monitoring techniques utilized, a statement that the monitor personally observed respondent's work and site records, and

that such work and site records were completed with reasonable skill and safety, and in compliance with all applicable federal, local, and state laws and regulations. If the monitor, at any time, determines that respondent is not in compliance with the statutes and/or regulations regarding its licensure, he/she shall immediately notify the Department.

- d. The civil penalty and all notices and reports shall be sent to:

Ronald Skomro, at the following address:

Ronald Skomro
State of Connecticut Department of Public Health
410 Capitol Avenue, MS #15AIR
P.O. Box 340308
Hartford, CT 06134-0308

3. Respondent shall comply with all laws, including the Connecticut General Statutes and the Regulations regarding asbestos abatement.
1. The term "asbestos abatement" as used herein shall have the same meaning as set forth in Connecticut General Statutes Section 19a-332(2).
5. Violation of any term(s) of this Amended Order may result in additional discipline being imposed against respondent's asbestos abatement license of including
but not limited to, licensure suspension and/or revocation, and/or imposition of additional civil penalties of up to \$10,000.00 for each separate violation.
6. This order is effective thirty days from the date of signature.

December 19, 2011
Date

Elisabeth Borrino
Elisabeth Borrino, Hearing Officer
Department of Public Health

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH**

In re: Connecticut Abatement
Technologies, Inc.

Petition No. 20000118-053-001

REVISED MEMORANDUM OF DECISION

Procedural Background

On June 28, 2000, the Department of Public Health ("the Department") issued a Statement of Charges against Connecticut Abatement Technologies, Inc. ("respondent"), due to its alleged violations of the Connecticut General Statutes and the Regulations of Connecticut State Agencies ("the Regulations") as described more particularly below. H.O. Exh. 1.

On July 19, 2000, notice of the hearing was provided to respondent by both first class and certified mail, return receipt requested. In the Notice of Hearing, Elisabeth Borrino, the undersigned, was appointed by the Commissioner of the Department to be the Hearing Officer and to rule on all motions, and to determine findings of fact and conclusions of law and issue an Order. H.O. Exh. 2.

On August 24, 2000, respondent filed an Answer. H.O. Exh. 3.

The administrative hearing was held on August 31, 2000, in accordance with Connecticut General Statutes Chapter 54 and Regulations §§19a-9-1 *et seq.* Respondent appeared through its secretary, Bruce Black;¹ Attorney Linda Fazzina, Esq., represented the Department.

This Final Decision is based entirely on the record and sets forth this Hearing Officer's findings of fact, conclusions of law, and Order. To the extent that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc. v. S & H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn 1985).

¹ Respondent is a corporation and Bruce Black is its secretary. Tr. 13.

Allegations

1. In paragraph 1 of the Charges, the Department alleges that respondent is, and has been at all times referenced in the Charges, the holder of Connecticut asbestos contractor license number 000087.
2. In paragraph 2 of the Charges, the Department alleges that in or about January of 2000, respondent performed an asbestos abatement project at 475 Washington Street, Middletown, CT ("the property") and violated Connecticut's standards for the proper performance of asbestos abatement, in that respondent
 - a. failed to ensure that no person leave the work area(s) unless first decontaminated by showering, wet washing or high efficiency particulate air ("HEPA") vacuuming to remove all asbestos debris;
 - b. failed to properly construct, operate, and/or maintain a worker decontamination system;
 - c. failed to ensure that a working source of warm water was available to supply the worker decontamination shower;
 - d. failed to comply with the alternative work practice ("AWP") approval that was issued by the Department on or about January 4, 2000;
 - e. failed to comply with Connecticut's asbestos abatement work practice standards during the removal of asbestos containing materials from a work area on the second floor of a building on the property, in that respondent
 - (i) failed to ensure that the work area was isolated from non-work areas by airtight barriers attached securely in place;
 - (ii) failed to cover floor and wall surfaces in the work area with polyethylene sheeting or the equivalent;
 - (iii) failed to ensure that all asbestos containing waste was adequately wetted and placed in leak-tight containers for disposal;
 - (iv) failed to ensure that a working source of water was available to adequately wet all asbestos-containing material to be removed or disturbed by removal from the property; and/or

- (v) failed to provide negative pressure ventilation units with HEPA filtration in sufficient numbers to allow at least one air change every fifteen minutes in each work area.
 - f. failed to properly label all containers holding asbestos containing waste.
- 3. In paragraph 3 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to Connecticut General Statutes §§ 20-440 and 19a-332a(b), taken in conjunction with Regulations §§ 19a-332a-1, 19a-332a-2, 19a-332a-5(c), 19a-332a-5(e), 19a-332a-5(h), 19a-332a-5(j), 19a-332a-5(k), 19a-332a-6, 19a-332a-7(a), 19a-332a-11, 20-440-1, and/or 220-440-6(b).

Findings of Fact

1. Respondent is, and has been at all times referenced in the Charges, the holder of Connecticut asbestos contractor license number 000087. H.O. Exhs. 1, 3.
2. On January 3, 2000, respondent filed an Asbestos Abatement Notification Form ("the Notification form") to conduct asbestos abatement at 475 Washington Street, Middletown, Connecticut ("the property"). Dept. Exh. 1.
3. The property consisted of a single-family house that was set back from the road, owned by the City of Middletown, and a public project. Tr. 21, 32-33.
4. On January 3, 2000, respondent filed an application with the Department for approval of alternative work practices for the property ("the application"). On January 4, 2000, the Department approved the application and authorized respondent to (1) erect barriers on the room openings, which included the windows and doors as well as any ventilation areas, in lieu of applying polyethylene sheeting to the walls and floors; and (2) abate the window putty by removal to the exterior. Tr. 18, 29; Dept Exhs. 1, 2.
5. Pursuant to the Notification form, respondent intended to abate asbestos containing material ("ACM") in (1) the mastic applied to the tile flooring, and (2) 120 linear feet of window putty on the window systems. Tr. 28; Dept. Exh. 1.
6. Floor tile is a non-friable form of asbestos.² Tr. 29.

² Pursuant to section 19a-332a-1 of the Regulations: Non-friable ACM "means any asbestos-containing material that hand pressure can not crumble, pulverize or reduce to powder when dry."

7. Stephen Dahlem is employed by the Department as a sanitarian. Tr. 16.
8. On January 11, 2000, Mr. Dahlem inspected the property. Tr. 17-18.
9. On January 11, 2000, respondent connected a garden hose between the fire hydrant, which was located by the street, and the property. Tr. 21.
10. Mark Araujo was the project supervisor for the property. Tr. 21.
11. On January 11, 2000, respondent failed to have a worker decontamination unit contiguous to the work area or a shower for persons to use upon exiting the property. It was feasible to have the decontamination units contiguous to the work areas and respondent did not have an approved AWP to use a remote unit instead of a contiguous one. Tr. 22-23, 25-27, 99, 103; Dept. Exh. 3:1
12. On January 11, 2000, there was no functioning worker decontamination unit on the property. Workers wore their street clothes as they both entered and exited the work areas. Tr. 37-38, 92; Dept. Exh. 3:2.
13. On January 11, 2000, workers exited the work areas without taking a shower. The HEPA vacuum was still on the truck and not operational. Tr. 40.
14. On January 11, 2000, there was no heat in the property. Tr. 23.
15. On January 11, 2000, the second floor windows had been removed by being pried out and pulled to the inside of the building. The second floor windows contained 120 linear feet of asbestos containing window putty. Tr. 34-35, 41, 108; Dept. Exhs. 1, 4; Rt. Exh. C.
16. On March 30, 1999, EnviroScience inspected the property, sampled the windows, and determined that all of the windows had asbestos containing wood putty.³ Tr. 106; Dept. Exh. 4; Rt. Exh. C.
17. Respondent did not install polyethylene sheeting on all walls and floors of the work areas. Dept. Exhs. 3:3, 3:4, 3:5.
18. On January 11, 2000, windows that had been removed were left on the landing of the first floor hallway. The wood putty was still in place, and at least two of the windows were broken. Once the ACM was removed, it

³ The EnviroScience Report excludes the windows in bedroom no. 4, which may have contained a different type of window. Tr. 106; Dept. Exh. 4.

should have been wrapped and labeled as waste. Respondent failed to do so. Tr. 42; Dept. Exh. 3:5.

19. Respondent failed to abate the windows in conformity with the Department-approved AWP in that it pulled the windows to the interior, rather than exterior, of the property. Respondent also failed to install barriers on the windows. Tr. 32, 41-43, 108-109, 135; Dept. Exhs. 2, 3:3, 3:4, 3:5.
20. On January 14, 2000, Mr. Dahlem reinspected the property. At that time, the weather temperature was below freezing. The hose connections to the fire hydrant were frozen. There was no water source to the contained area. Respondent was conducting abatement in the basement at the property. Tr. 46, 58; Rt. Exhs A1, A2.
21. On January 14, 2000, there was no water on site and the shower was not functional. Tr. 94.
22. On January 14, 2000, Mr. Black was the project supervisor. Tr. 49.
23. On January 14, 2000, respondent had poured solvent to clean off the floor tile. Mastic was the glue which held the tile in place and was an ACM. Tr. 46.
24. On January 14, 2000, respondent had placed approximately twenty-five to thirty bags of asbestos containing waste inside a dumpster at the property. The bags were not properly labeled. Tr. 50.
25. There was insufficient evidence to establish the Department's claim that respondent failed to provide negative pressure ventilation units as required by the Regulations.

Discussion and Conclusions of Law

The Department seeks discipline of respondent's asbestos abatement contractor's license alleging that respondent (1) failed to ensure that no person leave the work area(s) unless first decontaminated by showering, wet washing or high efficiency particulate air ("HEPA") vacuuming to remove all asbestos debris; (2) failed to properly construct, operate, and/or maintain a worker decontamination system; (3) failed to ensure that a working source of warm water was available to supply the worker decontamination shower; (4) failed to comply with the AWP

approval that was issued by the Department on or about January 4, 2000; (5) failed to ensure that the work area was isolated from non-work areas by airtight barriers attached securely in place; (6) failed to cover floor and wall surfaces in the work area with polyethylene sheeting or the equivalent; (7) failed to ensure that all asbestos containing waste was adequately wetted and placed in leak-tight containers for disposal; (8) failed to ensure that a working source of water was available to adequately wet all asbestos-containing material to be removed or disturbed by removal from the property; (9) failed to provide negative pressure ventilation units with HEPA filtration in sufficient numbers to allow at least one air change every fifteen minutes in each work area; and (10) failed to properly label all containers holding asbestos containing waste. Regulations §§19a-332a-6, 19a-332a-11, 19a-332a-5(c), 19a-332a-5(e), 19a-332a-5(j), 19a-332a-7(a), 19a-332a-5(h), and 19a-332a-5(k).

Section 19a-332a-2 of the Regulations provides that “[n]o person shall engage in asbestos abatement unless in compliance with Section 19a-332a-3 to Section 19a-332a-12 inclusive.”

Section. 19a-17(a) of the Connecticut General Statutes provides in relevant part as follows:

[T]he Department of Public Health . . . may take any of the following actions, singly or in combination, based on conduct which occurred prior or subsequent to the issuance of a permit or a license upon finding the existence of good cause:

- (1) Revoke a practitioner's license or permit;
- (2) Suspend a practitioner's license or permit;
- (3) Censure a practitioner or permittee;
- (4) Issue a letter of reprimand to a practitioner or permittee;
- (5) Place a practitioner or permittee on probationary status and require the practitioner or permittee to:
 - (A) Report regularly to such board, commission or department upon the matters which are the basis of probation;
 - (B) Limit practice to those areas prescribed by such board, commission or department;
 - (C) Continue or renew professional education until a satisfactory degree of skill has been attained in those areas which are the basis for the probation;

(6) Assess a civil penalty of up to ten thousand dollars . . .

The Department bears the burden of proof by a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. 91, 101 S. Ct. 999, *reh'g den.*, 451 U.S. 933 (1981); *Swiller v. Comm'r of Public Health*, CV-950705601, Superior Court, J.D. Hartford/New Britain at Hartford, October 10, 1995.

- 1. *Allegations that respondent failed to (1) ensure that no person leave the work area(s) unless first decontaminated by showering, wet washing or high efficiency particulate air ("HEPA") vacuuming to remove all asbestos debris; (2) properly construct, operate, and/or maintain a worker decontamination system; and (3) ensure that a working source of warm water was available to supply the worker decontamination shower.***

Section 19a-332a-6(b) of the Regulations states as follows:

No person or equipment shall leave the asbestos abatement project work area unless first decontaminated by showering, wet washing or HEPA vacuuming to remove all asbestos debris. No asbestos contaminated materials or persons shall enter the clean room.

Section 19a-332a-6(a) of the Regulations states in relevant part:

At all asbestos abatement projects, work areas shall be equipped with decontamination facilities consisting of: a clean room, a shower room, and an equipment room. Each room shall be separated from the other and from the work area by airlocks such as will prevent the free passage of air or asbestos fibers and shall be accessible through doorways protected with two (2) overlapping 4 mil polyethylene sheets. The clean room (or change room) shall be equipped with suitable hooks, lockers, shelves, etc. for workers to store personal articles and clothing. The shower room shall be contiguous to the clean room and equipment room. All personnel entering or leaving the work area shall pass through the shower room. The number of showers provided shall satisfy the requirements of OSHA 29 CFR 1910.141 (d) (3) (ii). Warm water shall be supplied to the showers. The equipment room (dirty room) shall be situated between the shower room and the work area, and separated from both by means of suitable barriers or overlapping flaps such as will prevent the free passage of air or asbestos fibers.

The uncontroverted evidence establishes that on both January 11 and 14, 2000,

workers left the work areas without being decontaminated in conformity with the Regulations. FF. 11, 12, 13. Respondent contends that (1) weather conditions precluded adequate construction and maintenance of the worker decontamination units, and (2) while the HEPA vacuum, admittedly, remained at the rear of the truck on January 11, 2000, this should be attributed to the project supervisor's inexperience. Neither of these contentions excuse regulatory violations.

First, when respondent determined that weather conditions were severe enough to interfere with its regulatory compliance, it should have suspended the abatement until compliance could be achieved. Nothing in the Regulations may be construed to be either optional or waived when weather conditions are severe.

Second, rather than mitigate the regulatory violation, the project supervisor's inexperience aggravates it. Respondent was evidently aware of this inexperience and failed to adequately address it to ensure regulatory compliance.

Accordingly, the Department sustained its burden of proof as regards the allegations contained in paragraphs 2a, 2b, and 2c of the Charges.

2. *Allegations that respondent failed to (1) comply with the alternative work practice approval that was issued by the Department on or about January 4, 2000; and (2) ensure that the work area was isolated from non-work areas by airtight barriers attached securely in place.*

Section 19a-332a-11 of the Regulations provides:

The Department may approve an alternative procedure for an asbestos abatement project or spot repair. The alternative procedures shall be submitted in writing and in advance for review by the Department and shall provide equivalent or a greater measure of asbestos emission control than the work practices prescribed by these regulations. Such approval may be granted for a period of time, not to exceed one year, for specified similar asbestos abatement projects or spot repairs performed within a facility. Such approval may be given for specified kinds of facilities or for asbestos abatement projects or spot repairs which utilize similar work procedures.

Section 19a-332a-5(c) of the Regulations states in relevant part:

The work area shall be isolated from non-work areas by air-tight barriers attached securely in place. All openings between the work area and non-work

areas including but not limited to windows, doorways, elevator openings, corridor entrances, ventilation openings, drains, ducts, grills, grates, diffusers and skylights, shall be sealed airtight with 6 mil polyethylene sheeting.

On January 4, 2000, the Department approved respondent's AWP application which authorized respondent to (1) install barriers instead of placing polyethylene sheeting on the floors, walls, windows, doors, and ventilation areas when removing the asbestos containing mastic, and (2) abate the window putty by removing the windows to the exterior of the property. FF. 4. Once the Department approves an AWP it constitutes the standard of practice for that project. Therefore, failure to comply with the AWP constitutes a violation. Tr. 64.

The uncontroverted evidence establishes that, in all respects, respondent failed to comply with the AWP that was approved by the Department on January 4, 2000. FF. 19. The uncontroverted evidence also establishes that respondent failed to ensure that the work area was isolated from the non-work areas by airtight barriers attached securely in place.

Accordingly, the Department sustained its burden of proof as regards paragraphs 2d and 2e(i) of the Charges.

3. *Allegations that respondent failed to cover floor and wall surfaces in the work area with polyethylene sheeting or the equivalent.*

Section 19a-332a-5(e) of the Regulations provides in relevant part:

Floor and wall surfaces in the work area shall be covered with polyethylene sheeting or equivalent. All seams and joints shall be sealed with tape or equivalent. Floor covering shall consist of at least two layers of 6 mil polyethylene and must cover at least the bottom 12 inches of adjoining wall. Wall covering shall consist of a minimum of two layers of 4 mil polyethylene sheet which shall overlap the floor covering to prevent leaks. There shall be no seams in the polyethylene sheet at the wall-to-floor joints.

Respondent applied for and the Department approved, an AWP as regards the placement of polyethylene sheeting. FF.4. Once an AWP is approved it constitutes the standard of practice for that project, and excuses compliance with the procedures otherwise required by regulation. In this instance, the AWP excused compliance

with section 19a-332a-5(e) of the Regulations. Therefore, although respondent violated the standard of practice by failing to comply with the AWP, respondent did not violate section 19a-332a-5(e) of the Regulations.

Accordingly, the Department thereby failed to sustain its burden of proof as regards the allegations contained in paragraph 2e(ii) of the Regulations.

4. Allegations that respondent failed to ensure that all asbestos containing waste was adequately wetted and placed in leak-tight containers for disposal.

Section 19a-332a-5(j) of the Regulations provides that “[a]ll asbestos containing waste shall be adequately wetted with an amended watersolution and be placed in leak-tight containers.”

The Department established that respondent removed the windows which had asbestos containing window putty, to the interior and stacked them in an interior landing. FF. 15, 16, 18. Respondent contends that it believed this practice appropriate since the window putty was neither removed nor disturbed. Respondent’s belief and contention are erroneous. Respondent’s removal of the windows neither complied with the Regulations or the AWP. FF. 18, 19.

Respondent also contends that the removed windows may not have contained asbestos and opines that they may have been replacement windows which lacked ACM. Respondent did not advise the Department of this contention prior to the hearing. The Hearing Officer affords respondent’s opinion no weight since (1) all documents generated by respondent as regards the property identifies the windows as containing 120 lin.ft. of window putty that was ACM; (2) the April 14, 1999 EnviroScience Consultants report identifies the window putty as ACM, and (3) EnviroScience Consultants January 17, 2000 Final Inspection Report determined that such window putty had been removed. Dept. Exh. 4; Rt. Exh. C.

Respondent was required to properly wet the asbestos and place it in a leak-tight container. The uncontroverted evidence establishes that respondent failed to do so. FF. 18.

Accordingly, the Department sustained its burden of proof as regards the allegations contained in paragraph 2e(iii) of the Charges.

- 5. *Allegations that respondent failed to ensure that a working source of water was available to adequately wet all asbestos-containing material to be removed or disturbed by removal from the property.***

Section 19a-332a-7a of the Regulations provides that “[a]ll ACM to be removed or disturbed by removal shall be adequately wetted unless otherwise approved by the Department.”

The record establishes that weather conditions on both January 11 and 14, 2000, substantially interfered with respondent’s ability to ensure that a working source of water was available at the property during the abatement. The record also establishes, however, that rather than either cease abatement or take action to ensure that a working source of water was available, respondent continued the abatement without regard to the regulatory requirements. FF. 20, 21.

Accordingly, the Department met its burden of proof as regards the allegations contained in paragraph 2e(iv) of the Charges.

- 6. *Allegations that respondent failed to provide negative pressure ventilation units with HEPA filtration in sufficient numbers to allow at least one air change every fifteen minutes in each work area.***

Section 19a-332a-5(h) of the Regulations provides:

Negative pressure ventilation units with HEPA filtration shall be provided in sufficient number to allow at least one (1) work place air change every 15 minutes. Filtered air should be exhausted to areas outside the building which are not near any intake for the building ventilation system.

There is no evidence in the record that respondent failed to provide negative pressure ventilation units as required by the Regulations, nor did the Department claim to have presented such evidence in its closing argument. Similarly, there is no reference to this allegation in Mr. Black’s testimony, respondent’s evidence, or its closing arguments. Indeed, the only references in the record concerning air filtration are contained in respondent’s January 17, 2000 handwritten log which states “neg air

used” and in the January 10 and 14, 2000 computer logs which claim that “negative air” was “set up.” Rt. Exhs. A1, A2. Although the Hearing Officer found the reliability and authenticity of both the written and computer-generated logs generally questionable, there is no other reference in the record to the negative pressure ventilation units with HEPA filtration.

Therefore, the Department failed to sustain its burden of proof as regards the allegations contained in paragraph 2e(v) of the Charges.

7. *Allegations that respondent failed to properly label all containers holding asbestos containing waste.*

Section 19a-332a-5(k) of the Regulations provides that “[a]ll leak-tight containers shall be labeled in accordance with OSHA 29 CFR 1926.58 and EPA 40 CFR Part 61.152 as appropriate.”

The uncontroverted evidence establishes that on January 14, 2000, Mr. Dahlem determined that approximately thirty bags of asbestos containing waste was on the property and not properly labeled in accordance with the Regulations. FF. 24. Respondent offered no meaningful defense to these allegations.

Accordingly, the Department sustained its burden of proof as regards the allegations contained in paragraph 2f of the Charges.

Based on the foregoing Findings of Fact, respondent violated Regulations §§19a-332a-6, 19a-332a-5(c), 19a-332a-5(j), 19a-332a-11, 19a-332a-7(a), and 19a-332a-5(k), inclusive, and respondent’s license is thereby subject to disciplinary action.

Section 20-440-6(b) of the Regulations provides:

Disciplinary action by the department. Following notice and a hearing held in accordance with the provisions of Chapter 54 of the Connecticut General Statutes, the department may take any action permitted by sections 19a-17 and 19a-332e of the Connecticut General Statutes, against any person issued a license or certificate under sections 20-440-1 through 20-440-9 of the Regulations of Connecticut State Agencies for conduct including but not

limited to: . . . (2) violation of any other regulations and statutes governing asbestos abatement or licensure; . . .

While the Hearing Officer appreciates the impact that weather conditions may have on the ability to maintain regulatory compliance, respondent was required to suspend abatement until and unless regulatory compliance was established.⁴

On January 11, 2000, Mr. Black was not on site, lacks personal knowledge of the conditions existing at that time, and proffered no witnesses to refute Mr. Dahlem's credible and comprehensive testimony. Commendably, Mr. Black testified credibly and candidly, admitted several of the violations, attested to his misinterpretation of several Regulations, and readily accepted responsibility for these violations. Although respondent believes that lack of intent to violate the regulations constitutes a defense, that belief is in error. Nothing in the Regulations requires either that the Department prove intent or that such lack of intent excuses regulatory violations.

On January 11 and 14, 2000, respondent not only exercised poor judgment, but also violated the Regulations in a manner which was potentially injurious to the public health. Accordingly, protecting the public, in this instance, warrants imposition of disciplinary action against respondent's asbestos contractor license as set forth hereinbelow.

Order

Pursuant to Connecticut General Statutes §§19a-17 and 20-440, this Hearing Officer orders the following against the asbestos abatement contractor license of Connecticut Abatement Technologies, Inc., license number: 000087:

1. Respondent shall pay a civil penalty of four thousand dollars (\$4,000.00) by certified or cashier's check payable to "Treasurer, State of Connecticut." The

⁴ Significantly, Mr. Dahlem explained that he visited a different asbestos abatement site during the week of January 11, 2000 that was experiencing the same climatic challenges. There, the contractor had a heater in place, the shower was set up, the workers wore appropriate attire, the shower was properly connected to the work areas, there was a water supply and the hoses were unfrozen. The

check shall reference the Petition Number on the face of the check, and shall be payable within thirty days of the effective date of this Decision.

2. Respondent's license shall be placed on probation until it completes five interior asbestos abatement projects. The five such projects that are subject of the probationary terms shall be the first five projects performed by respondent after the effective date of this Order and that involve interior abatement of more than three linear feet or more than three square feet of ACM; provided that such abatement projects do not require an emergency asbestos abatement notification where respondent does not have at least ten days before the start of the asbestos abatement to engage the services of an asbestos abatement project monitor as required hereinbelow. The terms and conditions of the probation shall be as follows:
 - a. For the next five asbestos abatement projects respondent contracts to perform, respondent, shall provide a copy of this Final Decision and Order to the Local Director of Health in any town in which the project is located;
 - b. No less than thirty (30) days before commencement of or engaging in each asbestos abatement project, respondent shall provide the Department with the name of each client and the location where it is conducting asbestos abatement activity, and shall certify that it has complied with Paragraph 2a of this Order;
 - c. Respondent shall obtain at its own expense the services of a licensed asbestos abatement project monitor ("monitor"), pre-approved by the Department, to conduct direct on-site inspections of each of the five asbestos abatement projects.
 - (i) The monitor shall have the right to monitor any and all work on the projects by any means, which he or she deems

Department thereby established that respondent could have attained regulatory compliance in this regard.

necessary to determine whether the abatement is being conducted in accordance with the controlling statutes and regulations. Respondent shall fully cooperate with the monitor;

- (ii) Respondent shall provide the monitor with the original records maintained on each asbestos abatement project;
- (iii) The monitor shall prepare and submit directly to the Department, a written report setting forth his/her findings regarding each such project, including respondent's site records. The monitor's reports shall include documentation of dates and duration of meetings with the corporate officers of respondent, a general description of the work reviewed, monitoring techniques utilized, a statement that the monitor personally observed respondent's work and site records, and that such work and site records were completed with reasonable skill and safety, and in compliance with all applicable federal, local, and state laws and regulations. If the monitor, at any time, determines that respondent is not in compliance with the statutes and/or regulations regarding its licensure, he/she shall immediately notify the Department.

- d. The civil penalty and all notices and reports shall be sent to:
Ronald Skomro, at the following address:

Ronald Skomro
State of Connecticut Department of Public Health
410 Capitol Avenue, MS #15AIR
P.O. Box 340308
Hartford, CT 06134-0308

- 3. Respondent shall comply with all laws, including the Connecticut General Statutes and the Regulations regarding asbestos abatement.

4. The term "asbestos abatement" as used herein shall have the same meaning as set forth in Connecticut General Statutes Section 19a-332(2).
5. Violation of any term(s) of this Order may result in additional discipline being imposed against respondent's asbestos abatement license of including but not limited to, licensure suspension and/or revocation, and/or imposition of additional civil penalties of up to \$10,000.00 for each separate violation.
6. This order is effective thirty days from the date of signature.

November 3, 2000
Date

Elisabeth Borrino
Elisabeth Borrino, Hearing Officer
Department of Public Health